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16
17 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
18 **OAKLAND DIVISION**

19 TWITTER, INC.,

20 Plaintiff,

21 v.

22 MATTHEW G. WHITAKER, Acting
Attorney General of the United States, *et al.*,
23

24 Defendants.

Case No. 14-cv-4480-YGR

**STIPULATED REQUEST TO SET A
SCHEDULE FOR RESOLUTION OF
STATE SECRETS ISSUE**

Hon. Yvonne Gonzalez Rogers

1 Plaintiff Twitter, Inc. and Matthew G. Whitaker, the United States Department of Justice,
2 Christopher Wray, and the Federal Bureau of Investigation (collectively, “Defendants”), by and
3 through their respective counsel of record, hereby stipulate as follows.

4 WHEREAS:

5 1. On January 2, 2018, the Court issued the Order to Show Cause Re: Disclosure of
6 Declaration Submitted *In Camera*, ECF No. 261 (“Order to Show Cause”), which required
7 Defendants to demonstrate why they should not be ordered to disclose to Plaintiff’s counsel the
8 Classified Declaration of Executive Assistant Director (“EAD”) Steinbach (“Classified
9 Declaration”). *See* ECF No. 261.

10 2. As Defendants explained in their Response to the Order to Show Cause
11 (“Response”), the Government had initiated, but had yet not completed, deliberations regarding
12 whether to assert the state secrets privilege to protect the Classified Declaration from disclosure.
13 *See* ECF No. 264 at 1.

14 3. In its Opposition to the Government’s Response, Twitter indicated that it did not
15 object to the Government being given time to complete its consideration of whether to invoke the
16 state secrets privilege if it could complete its review no later than March 17, 2019. Dkt. No. 265,
17 at 3, 20.

18 4. Although the parties had initially understood that there was to be a hearing
19 addressing the Order to Show Cause on February 15, 2019, the parties observed that there was no
20 hearing set on the Court’s calendar. Accordingly, on February 8, 2019, the parties jointly
21 contacted the Courtroom Deputy, who confirmed that the Court did not plan to hold a hearing in
22 this matter on February 15, 2019. During that call, the parties also discussed that the
23 Government’s deliberations regarding the potential assertion of the state secrets privilege over
24 the Classified Declaration were ongoing. The Courtroom Deputy instructed to parties to file a
25 stipulation, regarding a deadline for the Government to complete its consideration of whether to
26 assert the state secrets privilege in this matter.¹

27 ¹ The parties had intended to submit their stipulation by February 11, 2019, but, despite
28 their best efforts, were not able to finalize the instant stipulation until February 12, 2019.

1 5. As directed by the Court on February 8, 2019, the parties have met and conferred
2 and respectfully request that the Court set the following schedule for further proceedings related
3 to the Government's potential invocation of the state secrets privilege over the Classified
4 Declaration:

- 5 a) By March 15, 2019, the Government will inform the Court and Twitter whether it
6 intends to assert the state secrets privilege in this matter.
- 7 b) By March 19, 2019, the parties will submit a proposed schedule for further
8 proceedings based on the Government's decision regarding an assertion of the
9 state secrets privilege (including a proposed briefing schedule if the Government
10 does decide to invoke the state secrets privilege).

11
12
13 Agreed to and submitted by:

14 Dated: February 12, 2019

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/s/ Lee H. Rubin

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ATTORNEYS FOR PLAINTIFF

TWITTER, INC.

21
22
23
24 Dated: February 12, 2019

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ANTHONY J. COPPOLINO

Deputy Branch Director

/s/ Julia A. Heiman
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Attorneys for Defendants

I, Julia A. Heiman, attest that I obtained concurrence of Plaintiff's counsel in the filing of this document.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: February 12, 2019

/s/ Julia A. Heiman
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Senior Counsel

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24 Defendants.

Case No. 14-cv-4480-YGR

[PROPOSED] ORDER

Hon. Yvonne Gonzalez Rogers

Pursuant to stipulation of the parties, the Court HEREBY ORDERS that:

1. By March 15, 2019, the Government will inform the Court and Twitter whether it intends to assert the state secrets privilege in this matter.

2. By March 19, 2019, the parties will submit a proposed schedule for further proceedings based on the Government's decision regarding an assertion of the state secrets privilege (including a proposed briefing schedule if the Government does decide to invoke the state secrets privilege).

IT IS SO **ORDERED**, this _____ day of _____, 2019.

Dated: _____

HON. YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE